

February 7, 2024

The Honorable Will Smith, Chair
Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, Maryland 21401

RE: TESTIMONY ON SB0089 - Child Abuse and Neglect - Reports and Records - Disclosure - POSITION: INFORMATIONAL ONLY

Dear Chair Smith and Members of the Judicial Proceedings Committee:

The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide the following information for Senate Bill 89 (SB89). With offices in every one of Maryland's jurisdictions, DHS helps Marylanders in economic need, provides preventive services, and protects children and adults. The Social Services Administration (SSA) within DHS implements the Child Protective Services program. The children and families we serve through child protective services are impacted by SB 89.

SB 89 would authorize anyone in the public, without limitation, to review Child Abuse and Neglect reports and records related to a fatality or near-fatality of a child in DHS care at the time of the critical incident. COMAR 07.02.07.21(A)(1) establishes that records and reports concerning child abuse or neglect are confidential, and section (A)(2) establishes that unauthorized disclosure is a criminal offense. In addition, COMAR 07.02.07.21(B) requires disclosure of records, reports, or information to authorized entities including the court; under an order of an administrative law judge; the State Council on Child Abuse and Neglect; the State Citizens' Review Board of Children or their designees; to a health care practitioner or agency, institution, or program treating or caring for an alleged victim if the information or record is relevant to the treatment or care of the child; to the State Medical Director for Children Receiving Child Welfare Services and all personnel under the direct supervision of State Medical Director; or to a child fatality review team, as necessary to carry out their official functions. COMAR 07.02.07.21(C) provides a process for releasing reports of child fatalities or near fatalities in response to a written request by authorized persons or entities. Current regulations carefully balance confidentiality with transparency. Senate Bill 89 would authorize all persons to review otherwise confidential reports and records related to a fatality or near-fatality of a child in DHS care at the time of the critical incident.

Our first concern is regarding the bill's requirement that the State Attorney's office notify either the local department of social services (LDSS) or the Secretary and is related to the statutory structure of executive authority, vested by statute in the Secretary. The bill would inadvertently diminish the authority of the Secretary to make decisions to disclose case-specific fatality or near fatality information appropriately; a prerogative flowing from the Governor, not the LDSS. Thus all requests and information about fatalities and near fatalities must go through the Secretary's office or the Secretary's designee because it is the Secretary who is accountable for all decisions in these matters. The State's Attorney should not be authorized to bypass the Secretary to communicate only with the LDSS at the State Attorney's discretion.



Similarly, SB 89 would require the LDSS and Secretary to consult each other as functional co-equals. The new requirement would disrupt existing and effective executive authority. The Secretary is the head of the Department and is accountable for carrying out specific duties, including those relating to the “orderly and efficient administration of the Department” (§ 2-203) and the authority to review, approve, disapprove, or revise plans, proposals, and projects of each unit in the Department (§ 2-211). The Secretary’s existing statutory requirements and authorities are not currently, and should not be, subject to consultation with subordinate divisions of the Department of Human Services.

If the bill’s sponsor intends, as in prior legislative sessions, to authorize elected officials to request access to redacted, confidential child welfare records when there is a fatality or near fatality, then the bill text could be more narrowly tailored to that purpose. As a matter of policy, it is crucial to limit the individuals authorized to request otherwise confidential information to those persons with treatment, investigatory, or other authorities to act on such information in the best interests of all Marylanders.

We appreciate the opportunity to provide the aforementioned information to the Committee for consideration during your deliberations. We look forward to the decision of the Committee and welcome continued collaboration on SB 89.

If you require additional information, please contact Rachel Sledge, Director of Government Affairs, at rachel.sledge@maryland.gov.

In service,



Rafael López
Secretary